

20. (Previously presented) The training bat system of Claim 11, wherein said tubular member is comprised of aluminum.

Remarks/arguments

Claims 1 through 20 remain in the application. Reexamination and reconsideration of the application are requested in view of applicant arguments.

The examiner has rejected claims 1, 3 through 5, 9, 11, 13 through 15 and 19 under 35USC103 as being unpatentable over Bickel, et. al. The examiner states that Bickel discloses the elements of claim 1, however, fails to clearly disclose the use of plurality of weights. He goes on to state the specification provides no unanticipated or surprise result from the plurality of weights, therefore, it is considered a design of choice. The applicant transgresses this statement. The applicant states that the claim itself puts forth the reason for the plurality of weights. The second element of the claim states "a plurality of weight members that can be placed within the bore of said tubular member or it can be fully removed from the bore of said tubular member and these weights allow an individual to change the weights of the tubular member and make the tubular member similar in weight to a

conventional bat. Thus, the claim itself states that one of the reasons for the plurality of weights is that the individual can change the weight of the bat. It also states that the individual can make the weight similar to the weight of his conventional bat. On page 5 of the specifications, finds 18 and 19 the applicant puts forth "another objective is to provide a training bat system that may be utilized by individuals of various ages, sizes and skill level." The statement clearly puts forth the reasons for using the plurality of the weights and the ability to change the weight of the bat. On page 10, line 4 through 7, the applicant states "The weight members 60 are preferably comprised of various lengths and weights to allow for the user to balance the tubular member 20 to simulate the weight and balance of their regular bat he would use in a game " Here again the applicant states that the plurality of weights are designed so that the individual can change the weight of the bat and make it weigh similar to his conventional bat. Thus, applicant clearly puts forth the reasons for the plurality of weights. The reasons for the plurality weights are clearly not an obvious design equivalent means. It should be noted that Bickel actually teaches a way from applicants bat. Applicant stated that the plurality of weight is to make the bat weigh similar to the one the individual would use during the game or heavier. Bickel states that in paragraph marked 0007 "a second goal was to create a light

weight device. Repeated strings with a standard weight bat can produce muscle fatigue and possibly even injure. Repeated repetition in a fatigued state does not build the proper muscle memory so it is important that the training aid be light weight ". Thus, Bickel teaches a bat to be lighter than one an individual normally uses. Secondly, it should be noted that using a plurality of weights in Bickel would destroy the main objective of Bickel's system. Bickel states that the goal in 0006 of his bat "the goal was to create a device that would only make a distinct noise at the proper point of bat contact with a pitched ball, the point of full extension. The batter's swing is very fast and thus difficult to visually examine and evaluate, even for an experienced hitter hitting instructor. Your ears are very accurate at locating a point where the snap occurs. This promotes muscle memory teaching the point for the hitters". If more than one weight was actually used, you would get more than one snap in this bat. This would clearly not promote a muscle memory teaching point for hitters. Thus, clearly claim 1 is patentable over Bickel. It should also be noted that the snap bat of Bickel is not designed to be used as a regular bat and probably would be damaged if it was used as a regular bat. Claim 1 clearly calls for the tubular member to be made out of the material that would not be damaged when used as a bat.

Claims 3, 4, 5 and 9 are all dependent upon claim 1, thus the same argument that applies to claim 1 would also apply to claims 3, 4, 5, and 9. Thus, claims 3, 4, 5 and 9 are clearly patentable over Bickel. It should also be noted that as to claims 4 and 5, the examiner has stated that the specifications provide no unanticipated or surprising results from using a plurality of weights members of varying weight and size, therefore, would be considered a design choice. However, the specifications and the claim both put forward the reason for using the plurality of weights. As I pointed out above, the reason for using the plurality of different weights is so that an individual can make his bat weigh similar to that of his conventional bat he uses in a ball game. Secondly, as I also pointed out above, by using various weights that are movable as in Bickel, when one swung one would clearly get more than one sound, since the varying weights would move at different speeds down the bat. This would totally destroy the goal of the Bickel's bat. Thus, clearly claims 4 and 5 are patentable over Bickel.

Claim 11 as claim 1 has an element which calls for a plurality of weights, thus, the same argument that applies to claim 1 would also apply to claim 11 and make claim 11 patentable over Bickel. As I pointed out for claim 1, the specifications clearly point out that the differing weights that can be put in and removed from the bat are used to allow individuals to

produce a bat of the weight at which they want. This means the individual could produce a weight similar to the bat he would be using in a ball game. Further, it means that different individuals who use different weighted bats could use the same training bat and just use a different combination of the weights.

Claims 13 through 15 and 19 are all ultimately dependent upon claim 11, thus, the same argument that applies to claim 11 would also apply to claims 13 through 15 and 19.

The Examiner has rejected claims 1 through 8 and 11 through 18 under 35 USC 103(a) as being unpatentable over Owen et al in view of Pomila. The Examiner states that Owen discloses the elements of claim 1, however does not disclose the use of a bat with a uniform outer diameter. Pomila discloses the use of a bat with a uniform outer diameter. The examiner goes on to say that it would have been obvious to one of ordinary skill in the art to have selected the bat shape disclosed in Pomila in order to reduce material costs.

Applicant states that the combination of Owen and Pomila does not show one of the elements of claim 1. Neither Owen or Pomila show a "bore extending within from an inner end to a distal end of said tubular member" as called for in claim 1. Owen shows a short bore at the top of the bat and

Pomila does not show a bore. Thus claim one is patentable over Owen in view of Pomila because neither Owen nor Pomila show a bore that extends the full length of the bat.

Claim 11 is the other independent claim in the application. Claim 11 like claim 1 calls for "a bore extending within from an inner end to a distal end of said tubular member." Thus claim 11 would be patentable over Owen in view of Pomila because neither Owen nor Pomila show a bore that extends the full length of the bat. Claim 11 also call for a cap on both ends of the bat to hold the weights within. Owens has a cap only on one end to hold the weights within and Pomila has no caps to hold the weights within. Thus clearly claim 11 is patentable over Owen in view of Pomila.

As to claim 2 and 12 the examiner states that Owen discloses positionable weight members. As to claim 3 and 13 the examiner states that Owen discloses a bore of consistent diameter. Claims 2 and 3 are ultimately dependant on claim 1 and Claims 12 and 13 are ultimately dependant on claim 11. Thus the same argument that applies to claim 1 and 11 also applies to claims 2, 3, 12, and 13. Thus clearly claims 2, 3, 12, and 13 are patentable over Owen in view of Pomila.

The examiner states as to claims 4, 5, 14 and 15 the specification provides no unanticipated or surprising results from using a plurality of

weight members of varying weight and sizes, therefore these are considered design choices. Applicant transverses this statement. As pointed out above the specification states ""The weight members 60 are preferably comprised of various lengths and weights to allow for the user to balance the tubular member 20 to simulate the weight and balance of their regular bat he would use in a game " Thus the reason for the weight being of differing length and weights is "to allow or the user to balance the tubular member 20 to simulate the weight and balance of their regular bat he would use in a game." It should be noted that the Owen system is designed to make the bat heavier rather than of similar weight and balance. Thus clearly claims 4, 5, 14, and 15 are patentable over Owen in view of Pomila. Further claims 4, 5, 14, and 15 ultimately dependant on claim 1 or 11. Thus the same argument that applies to claim 1 and 11 also applies to claims 4, 5, 14, and 15. Thus clearly claims 4, 5, 14, and 15 are patentable over Owen in view of Pomila.

Claims 6, 7, 8, 16, 17, and 18 are ultimately dependant on claim 1 or 11. Thus the same argument that applies to claim 1 and 11 also applies to claims 6, 7, 8, 16, 17, and 18. Thus clearly claims 6, 7, 8, 16, 17, and 18 are patentable over Owen in view of Pomila.

The examiner states as to claims 10 and 20 are unpatentable over Owen in view of Pomila and Nelson. Applicant states Claims 10 and 20 are dependant on claim 1 or 11. Thus the same argument that applies to claim 1 and 11 also applies to claims 10 and 20 as to Owen and Pomila. Applicant is not exactly certain how Nelson is used by the examiner. Applicant believe that examiner is replacing the wood of Owen for aluminum of Nelson. This however would not create a bore that extends form one end of the tube to the other. Thus claims 10 and 20 are clearly patentable over Owen in view of Pomila and Nelson.

As to claims 9 and 19 Examiner states that they are unpatentable over Owen in view of Pomila as to the argument as to claim 1 and further in view of Blum. Blum shows a bat made out of plastic. Applicant assumes that examiner is replacing the wood of Owen for the plastic of Blum. This however would not create a bore that extends form one end of the tube to the other. Thus claims 10 and 20 are clearly patentable over Owen in view of Pomila and Blum

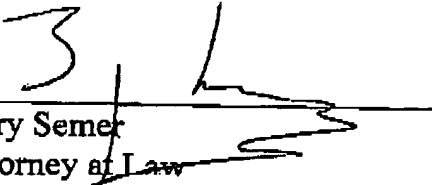
As to claims 10 and 20 Examiner states that they are unpatentable over Owen in view of Pomila as to the argument as to claim 1 and further in view of Merritt. Merritt shows a bat made out of aluminum. Applicant assumes that examiner is replacing the wood of Owen for the aluminum of

Merritt. This however would not create a bore that extends from one end of the tube to the other. Thus claims 10 and 20 are clearly patentable over Owen in view of Pomila and Merritt.

Furthermore, it is believed the claims define an invention which is unobvious over all US patents to Owen, Pomila, Blum, Bickel, Nelson and Merritt, taken singularly or in combination. None of these references show weighted members that can be positioned within the tubular member that can make the tubular member of similar weight and balance to a conventional bat.

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration of the rejection and objections is requested. Allowance of claims 1 through 20 at an early date is solicited.

Respectfully submitted,


Jerry Semer
Attorney at Law
617 Croghan Street
Fremont, Ohio 43420
419-332-2221
#33,087